

IN THE SIXTH JUDICIAL DISTRICT COURT, STATE OF UTAH,
COUNTY OF GARFIELD.

.....

W.G.Baker et. al.

Plaintiffs,

vs,

A.M. Lyman et. al.

Defendants

DECISION OF THE COURT.

Garfield County
Boulder Creek Adj

The above entitled cause having been duly heard and tried by agreement and stipulation entered in o between said parties in open court, at Boulder, Garfield County, Utah, and the same having been duly submitted on the 24th day of October, 1901, and the Court having taken the same under advisement and duly considered the issues and evidence in said cause now renders its decision as follows:---

The Court finds that the defendants in said cause, to wit, Mason Lyman, Chris. Moosman, Haskin Lyman, Amasa Lyman, Fred Simons, John Safely, J.S. Liston, _____ Sheffield, Chas. Hazer and Vern Lyman have appropriated and used and have acquired the right and title to the use of 9/16 of the East Fork of Boulder Creek; and the plaintiffs herein, to wit, Henry Baker Frank Hawes, W.G. Baker Jr., John R. Baker, J.C. Peters Victor Bean, W.G. Baker Sr. (the estate of) and Walter Baker have used and appropriated and are entitled to the use of 7/16 of said creek, to wit, the East Fork of Boulder Creek.

The Court finds that Mrs. Minnie Hawes has appropriated and used and has acquired the right and title to the use of the waters of Bear Creek, a tributary of the said Boulder Creek, the same to be used on her ranch on said Bear Creek.

The Court further finds that Henry Baker has acquired title by prior appropriation to 4/32 or 1/8 of the entire creek of Boulder where the same passes his headgate; that Frank Hawes has acquired title by prior appropriation to 6/32 of the entire Boulder Creek where the same enters the flat on which his ranch is located; that W.G. Baker Jr. has acquired title by prior appropriation to 6/32 of said Boulder creek where the same enters said flat above mentioned; that John R. Baker has acquired title by prior appropriation to 2/32 of said Boulder creek where the same is diverted by the plaintiffs herein; that J.C. Peters, Victor E. Bean and the estate of W.G. Baker Sr. through their predecessors in interest have acquired title by prior appropriation to 13/32 of said stream where the same is diverted and appropriated by the plaintiffs as aforementioned; and Walter Baker has acquired title by prior appropriation to 1/32 of said stream where the same is diverted and taken from said creek by the plaintiffs as aforesaid.

The Court further finds that the defendants Fred Simons, John Safely J.S. Liston, _____ Sheffield, have acquired titles by prior appropriation to 8/18, or 4/9 of the waters of the East Fork of Boulder, to wit, 4/9 of the 9/16 above awarded to defendants herein, and that the respective amounts to which each of said defendants is entitled and to which they have acquired title by prior appropriation is as follows:----

Fred Simons,	<u>2/18</u> or <u>1/9</u> .
John Safely	<u>2/18</u> or <u>1/9</u> .
J.S. Liston	<u>2/18</u> or <u>1/9</u> .
_____ Sheffield	<u>2/18</u> or <u>1/9</u> .

These four defendants having heretofore diverted the water used by them from the Lyman ditch at one and the same point, will continue to divert their entire stream of water, to wit, 4/9 of the (9/16) awarded the Lyman ditch at the same point that they have heretofore been diverting it, and they and each of them will be prohibited from changing the point of diversion of the amount to which he is entitled and above awarded, without the written consent of the other defendants last above mentioned.

The other defendants, viz, Mason Lyman, Chris Moosman, Haskin Lyman Amasa Lyman Sr., Charles Nazer and Vern Lyman have prior appropriation acquired title to the remainder of the water awarded to the Lyman Ditch to wit, 5/9 of all the waters awarded the defendants, and the respective and individual rights thereto are as follows:----

Mason Lyman	5/36 of the waters awarded to the defendants.
Chris Moosman	6/36 (or 1/6) of the same.
Haskin Lyman and Amasa Lyman	6/36 (or 1/6) of the same.
Charles Nazer and Vern Lyman	3/36 (or 1/12) of the same.

Haskin Lyman and Amasa Lyman shall be entitled to the use of 6/36 or 1/6 of the stream awarded them as follows: Haskin Lyman shall be entitled to use said stream one day, or 24 hours, and Amasa Lyman at the termination of said day shall be entitled to use the entire stream awarded to them 5 days or 120 hours, and so on during the entire irrigating season.

Charles Nazer and Vern Lyman shall use the stream awarded them alternately for such length of time as they may agree upon, and neither of the parties last above mentioned shall be permitted to change the point or place of diversion without the written consent of the others.

RECAPITULATION.

Plaintiffs' Rights:---

Henry Baker	4/32
Frank Hawes,	6/32
W.G. Baker Jr.,	6/32
John R. Baker,	2/32
J.C. Peters,	
Victor E. Bean	
Estate of W.G. Baker Sr.)	
Walter Baker,	13/32
	1/32 of the waters awarded plaintiffs.

7/16 of East Fork of Boulder Cr.

16.0 cfs Boulder = 7.0 cfs

Defendants' rights:----

Fred Simons,	4/36
John Safely,	4/36
J.S. Liston,	4/36
Sheffield,	4/36
Mason Lyman	5/36
Chris Moosman	6/36
Haskin Lyman and Amasa Lyman Sr.	6/36
Charles Nazer and Vern Lyman,	3/36 of the waters awarded defendants.

9/16 of East Fork of Boulder Cr.

16.0 cfs Boulder = 9.0 cfs

(Bear Cr. Trib. to Boulder To Mrs. Minnie Hawes)

The Court further finds from the evidence that a second-foot of water will irrigate from 25 to 40 acres of the lands owned by the plaintiffs and that a second-foot will irrigate from 40 to 60 acres of land of the character owned and irrigated by defendants. And in normal seasons there are 24 second feet of water in Boulder Creek and 16 of it is furnished by East Fork.

It is further found that the plaintiffs and defendants and each of them shall be prohibited from changing the point of diversion of the water that they are entitled to without the written consent of their co-owners in said stream or streams who may be prejudiced or affected thereby.

The Court retains jurisdiction of said cause for the purpose of appointing a Commissioner or Commissioners to divide and shall distribute said waters in accordance with this decision and a decree hereafter to be filed in this action, and for the purpose of placing in said ditches and canals the proper and necessary headgates.

The Court further finds that plaintiffs and defendants shall bear the costs of putting in a proper head or dividing gate in the East Fork of Boulder where defendants divert their water therefrom according to their respective interests in said stream.

The Court further finds that where individuals, or where parties jointly take water from the main channel of said creek or creeks, headgates shall be borne by such individuals or individuals, as the case may be. And in all cases the headgates shall be placed in and constructed in accordance with the plans furnished by the commissioner or commissioner appointed by the court.

The plaintiffs and each of them, their agents, servants and employees and each of them, and ~~each~~ the defendants and each of them, their agents, servants and employees and each of them shall be perpetually restrained and enjoined from in any way interfering with or molesting the rights of all other parties and persons interested and who have been awarded rights in this action to the waters of said Boulder Creek, its tributaries, and all canals and ditches leading from said creek.

The Court further finds that each party shall pay its own costs; the costs of court, filing papers etc., shall be paid by the plaintiffs; the costs incurred by the Clerk and his expenses shall be paid and taxed as follows: The plaintiffs one-half of such costs and expenses and the defendants one-half of such costs and expenses.

Dated this December 20th, 1901.

n.

Wm. McCarty

District Judge.

State of Utah
County of Garfield ss.

I, J. T. Partridge, Clerk of the Court, of The Sixth Judicial District Court of the State of Utah, County of Garfield, hereby certify that the foregoing is a full true and correct copy of Decision of Court as filed in my office dated December 20th 1901 in File No 84.

Witness my hand and seal this 19th day of April A.D. 1926

J. T. Partridge
Clerk of Court

Edw. Johnson for him
Deputy